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SENATE BILL NO. 698

Offered January 21, 2016

A *BILL to amend and reenact § 10.1-603.19 of the Code of Virginia, relating to grants from the Dam Safety, Flood Prevention and Protection Assistance Fund to private entities.*

Patron—Wexton

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 10.1-603.19 of the Code of Virginia is amended and reenacted as follows:

§ 10.1-603.19. Purposes for which Fund is to be used; Authority to set terms and conditions of loans.

A. The Director may make grants or loans to any local government for the purpose of assisting the local government in the development and implementation of flood prevention or protection projects, or for flood prevention or protection studies.

B. The Director may expend from the Fund up to \$50,000 annually for cost share with federal agencies in flood protection studies of statewide or regional significance.

C. The Director may, in order to protect public safety and welfare, make (i) grants or loans to local governments *and private entities, including homeowners' associations and planned unit developments as defined in § 15.2-2201*, owning dams ~~and loans to private entities~~ for the design, repair, and the safety modifications of dams identified in safety reports generated pursuant to § 10.1-607 or 10.1-609 and (ii) grants to local governments and private entities, *including homeowners' associations and planned unit developments as defined in § 15.2-2201*, for the determination of the hazard classification for impounding structures, dam break analysis, the mapping and digitization of dam break inundation zones, incremental damage analysis, and other engineering requirements such as emergency action plan development.

D. The Director may, in order to reduce dam owner expenses associated with hazard classification, dam break analysis, the mapping and digitization of dam break inundation zones, incremental damage analysis, and other engineering requirements such as emergency action plan development, expend moneys from the Fund to employ staff or to directly contract for these services. The Director may establish a fee to be paid by the dam owner to offset a portion of these services. Such fee shall not exceed 50 percent of the cost incurred by the Department.

E. The Director may, in order to protect people at risk from a dam failure and to assist dam owners, localities, and emergency responders, expend moneys from the Fund to maintain a statewide dam failure early warning system in cooperation with the Department of Emergency Management and the U.S. National Weather Service.

F. The total amount of expenditures for grants in any fiscal year shall not exceed 50 percent of the total noninterest or income deposits made to the Fund during the previous fiscal year, together with the total amount collected in interest or income from the investment of moneys in the Fund from the previous fiscal year as determined at the beginning of the fiscal year.

G. Any grants made from the Fund shall require a 50 percent project match by the applicant. Any loans made from the Fund shall require a minimum of a 10 percent project match by the applicant.

H. Except as otherwise provided in this article, ~~money~~ moneys in the Fund shall be used solely to make loans or grants to local governments or private entities, *including homeowners' associations and planned unit developments as defined in § 15.2-2201*, to finance or refinance the cost of a project. The local government or private entity, *including homeowners' associations and planned unit developments as defined in § 15.2-2201*, to which loans or grants are made, the purposes of the loan or grant, the required match for the specific loan or grant, and the amount of each loan or grant, shall be designated in writing by the Director to the Authority. No loan or grant from the Fund shall exceed the total cost of the project to be financed or the outstanding principal amount of the indebtedness to be refinanced plus reasonable financing expenses. Loans may also be from the Fund, at the Director's discretion, to a local government that has developed a low-interest loan program to provide loans or other incentives to facilitate the correction of dam or impounding structure deficiencies, as required by the Department, provided that the moneys are to be used only for the program and that the dams or impounding structures to be repaired or upgraded are owned by private entities, *including homeowners' associations and planned unit developments as defined in § 15.2-2201*.

I. Except as otherwise provided in this article, the Authority shall determine the interest rate and terms and conditions of any loan from the Fund, which may vary between different loans and between

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59 local governments and private entities to finance or refinance the cost of a project. Each loan shall be
60 evidenced by appropriate bonds or notes of the local government or by the appropriate debt instrument
61 for private entities payable to the Fund. Private entities shall duly authorize an appropriate debt
62 instrument and execute same by their authorized legal representatives. The bonds or notes shall have
63 been duly authorized by the local government and executed by its authorized legal representatives. The
64 Authority may require in connection with any loan from the Fund such documents, instruments,
65 certificates, legal opinions, covenants, conditions, and other information as it may deem necessary or
66 convenient to further the purpose of the loan. In addition to any other terms or conditions that the
67 Authority may establish, the Authority may require, as a condition to making any loan from the Fund,
68 that the local government or private entity receiving the loan covenant to perform any of the following:

69 1. Establish and collect rents, rates, fees, and charges to produce revenue sufficient to pay all or a
70 specified portion of (i) the costs of operation, maintenance, replacement, renewal, and repairs of the
71 project; (ii) any outstanding indebtedness incurred for the purposes of the project, including the principal
72 of, premium, if any, and interest on the loan from the Fund; and (iii) any amounts necessary to create
73 and maintain any required reserve, including any rate stabilization fund deemed necessary or appropriate
74 by the Authority to offset the need, in whole or part, for future increases in rents, rates, fees, or charges;

75 2. With respect to local governments, levy and collect ad valorem taxes on all property within the
76 jurisdiction of the local government subject to local taxation sufficient to pay the principal of and
77 premium, if any, and interest on the loan from the Fund to the local government;

78 3. Create and maintain a special fund or funds for the payment of the principal of, premium, if any,
79 and interest on the loan from the Fund and any other amounts becoming due under any agreement
80 entered into in connection with the loan, or for the operation, maintenance, repair, or replacement of the
81 project or any portions thereof or other property of the borrower, and deposit into any fund or funds
82 amounts sufficient to make any payments on the loan as they become due and payable;

83 4. Create and maintain other special funds as required by the Authority;

84 5. Perform other acts otherwise permitted by applicable law to secure payment of the principal of,
85 premium, if any, and interest on the loan from the Fund and to provide for the remedies of the Fund in
86 the event of any default by the borrower in payment of the loan, including, without limitation, any of
87 the following:

88 a. The conveyance of, or the granting of liens on or security interests in, real and personal property,
89 together with all rights, title and interest therein;

90 b. The procurement of insurance, guarantees, letters of credit and other forms of collateral, security,
91 liquidity arrangements or credit supports for the loan from any source, public or private, and the
92 payment therefor of premiums, fees, or other charges;

93 c. The combination of one or more projects, or the combination of one or more projects with one or
94 more other undertakings, facilities, utilities, or systems, for the purpose of operations and financing, and
95 the pledging of the revenues from such combined projects, undertakings, facilities, utilities and systems
96 to secure the loan from the Fund borrower made in connection with such combination or any part or
97 parts thereof;

98 d. The maintenance, replacement, renewal, and repair of the project; and

99 e. The procurement of casualty and liability insurance;

100 6. Obtain a review of the accounting and internal controls from the Auditor of Public Accounts or
101 his legally authorized representatives, as applicable. The Authority may request additional reviews at any
102 time during the term of the loan. In addition, anyone receiving a report in accordance with
103 § 10.1-603.23 may request an additional review as set forth in this section; and

104 7. Directly offer, pledge, and consent to the Authority to take action pursuant to § 62.1-216.1 to
105 obtain payment of any amounts in default, as applicable.

106 All local governments or private entities, *including homeowners' associations and planned unit*
107 *developments as defined in § 15.2-2201*, borrowing money from the Fund are authorized to perform any
108 acts, take any action, adopt any proceedings, and make and carry out any contracts that are contemplated
109 by this article. Such contracts need not be identical among all local governments or private entities,
110 *including homeowners' associations and planned unit developments as defined in § 15.2-2201*, but may
111 be structured as determined by the Authority according to the needs of the contracting local
112 governments or private entities and the Fund.

113 Subject to the rights, if any, of the registered owners of any of the bonds of the Authority, the
114 Authority may consent to and approve any modification in the terms of any loan to any local
115 government.